

APPROVED AND SIGNED BY THE GOVERNOR

Date April 9

Time 6:30 pm

110: 785

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1981



ENROLLED

Committee Substitute for
HOUSE BILL No. 785

(By Mr. Harman, 33rd Dist.)



Passed March 31, 1981

In Effect ninety days from Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 785

(By MR. HARMAN, 33rd Dist.)

[Passed March 31, 1981; in effect ninety days from passage.]

AN ACT to amend chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten, relating to the jurisdiction of courts to determine child custody; setting certain requirements to be satisfied before a custody decree may issue; requiring notice to contestants and others; providing for methods of notice; procedures when simultaneous proceedings take place in foreign jurisdictions; allowing a court to refuse jurisdiction or stay proceedings under specified circumstances; requiring certain information from party or parties before the court; allowing for joinder of additional parties by order of the court; giving the court power to order personal appearances and to require another to pay the expenses of such appearances; providing for the admission of psychological testimony and assessing the cost thereof; setting forth res judicata effect of custody decrees; requiring recognition of decrees from foreign jurisdictions meeting requirements of this article; allowing modification of foreign decrees under certain circumstances; providing procedures for enforcement of foreign decrees; requiring a registry thereof and requiring certified copies upon request; allowing taking of testimony in

foreign jurisdictions by request of a party or by the court sua sponte; providing for cooperation between jurisdictions concerning evidence and appearance of parties; requiring preservation of documents for use in foreign jurisdictions; requiring procurement of foreign decrees; providing for international application; requiring priority of questions of jurisdiction; and citation form.

Be it enacted by the Legislature of West Virginia:

That chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article ten, to read as follows:

ARTICLE 10. UNIFORM CHILD CUSTODY JURISDICTION ACT.

§48-10-1. Purposes of article; construction of provisions.

- 1 (a) The general purposes of this article are to:
 - 2 (1) Avoid jurisdictional competition and conflict with
3 courts of other states in matters of child custody which have
4 in the past resulted in the shifting of children from state to
5 state with harmful effects on their well-being;
 - 6 (2) Promote cooperation with the courts of other states
7 to the end that a custody decree is rendered in that state
8 which can best decide the case in the interest of the child;
 - 9 (3) Assure that litigation concerning the custody of a child
10 takes place ordinarily in the state with which the child and his
11 family have the closest connection and where significant evi-
12 dence concerning his care, protection, training, and personal
13 relationships is most readily available, and that courts of this
14 state decline the exercise of jurisdiction when the child and his
15 family have a closer connection with another state;
 - 16 (4) Discourage continuing controversies over child custody
17 in the interest of greater stability of home environment and of
18 secure family relationships for the child;
 - 19 (5) Deter abductions and other unilateral removals of
20 children undertaken to obtain custody awards;
 - 21 (6) Avoid relitigation of custody decisions of other states
22 in this state insofar as feasible;

23 (7) Facilitate the enforcement of custody decrees of other
24 states;

25 (8) Promote and expand the exchange of information and
26 other forms of mutual assistance between the courts of this
27 state and those of other states concerning the same child; and

28 (9) Make uniform the law of those states which enact it.

29 (b) This article shall be construed to promote the general
30 purposes stated in this section.

§48-10-2. Definitions.

1 As used in this article:

2 (1) "Contestant" means a person, including a parent, who
3 claims a right to custody or visitation rights with respect to
4 a child;

5 (2) "Custody determination" means a court decision and
6 court orders and instructions providing for the custody of a
7 child, including visitation rights; it does not include a decision
8 relating to child support or any other monetary obligation of
9 any person;

10 (3) "Custody proceeding" includes proceedings in which a
11 custody determination is one of several issues, such as an
12 action for divorce or separation, and includes child neglect
13 and dependency proceedings;

14 (5) "Decree" or "custody decree" means a custody deter-
15 mination contained in a judicial decree or order made in a
16 custody proceeding and includes an initial decree and a modi-
17 fication decree;

18 (5) "Home state" means the state in which the child im-
19 mediately preceding the time involved lived with his parents,
20 a parent or a person acting as parent for at least six
21 consecutive months and, in the case of a child less than
22 six months old, the state in which the child lived from birth
23 with any of the persons named. Periods of temporary absence
24 of any of the named persons are counted as part of the
25 six-month or other period;

26 (6) "Initial decree" means the first custody decree con-
27 cerning a particular child;

28 (7) "Modification decree" means a custody decree which
29 modifies or replaces a prior decree, whether made by the
30 court which rendered the prior decree or by another court;

31 (8) "Physical custody" means actual possession and control
32 of a child;

33 (9) "Person acting as parent" means a person, other than
34 a parent, who has physical custody of a child and who has
35 either been awarded custody by a court or claims a right to
36 custody; and

37 (10) "State" means any state, territory or possession of
38 the United States, the Commonwealth of Puerto Rico and the
39 District of Columbia.

§48-10-3. Jurisdiction.

1 (a) A court of this state which is competent to decide
2 child custody matters has jurisdiction to make a child custody
3 determination by initial or modification decree if:

4 (1) This state (i) is the home state of the child at the time
5 of commencement of the proceeding or (ii) has been the
6 child's home state within six months before commencement of
7 the proceeding, the child is absent from this state because
8 of his removal or retention by a person claiming his custody
9 or for other reasons and a parent or person acting as parent
10 continues to live in this state; or

11 (2) It is in the best interest of the child that a court of
12 this state assume jurisdiction because (i) the child and his
13 parents, or the child and at least one contestant, have a
14 significant connection with this state, and (ii) there is avail-
15 able in this state substantial evidence concerning the child's
16 present or future care, protection, training and personal
17 relationships; or

18 (3) The child is physically present in this state, and (i)
19 the child has been abandoned, or (ii) it is necessary in an
20 emergency to protect the child because he has been subjected

21 to or threatened with mistreatment or abuse or is otherwise
22 neglected or dependent; or

23 (4) (i) It appears that no other state would have jurisdiction
24 under prerequisites substantially in accordance with subdivi-
25 sion (1), (2) or (3) of this subsection, or another state
26 has declined to exercise jurisdiction on the ground that this
27 state is the more appropriate forum to determine the custody
28 of the child, and (ii) it is in the best interest of the child that
29 this court assume jurisdiction.

30 (b) Except under subdivisions (3) and (4) of subsection
31 (a), physical presence in this state of the child, or of the
32 child and one of the contestants, is not alone sufficient to
33 confer jurisdiction on a court of this state to make a child
34 custody determination.

35 (c) Physical presence of the child, while desirable, is
36 not a prerequisite for jurisdiction to determine his custody.

§48-10-4. Notice and opportunity to be heard.

1 Before making a decree under this article, reasonable
2 notice and opportunity to be heard shall be given to the con-
3 testants, any parent whose parental rights have not been pro-
4 viously terminated and any person who has physical custody
5 of the child. If any of these persons is outside this state, notice
6 and opportunity to be heard shall be given pursuant to section
7 five of this article.

**§48-10-5. Notice to persons outside this state; submission to jur-
isdiction.**

1 (a) Notice required for the exercise of jurisdiction over a
2 person outside this state shall be given in a manner reason-
3 ably calculated to give actual notice and may be:

4 (1) By personal delivery outside this state in the manner
5 prescribed for service of process within this state;

6 (2) In the manner prescribed by the law of the place in
7 which the service is made for service of process in that place
8 in an action in any of its courts of general jurisdiction;

9 (3) By any form of mail addressed to the person to be
10 served and requesting a receipt; or

11 (4) As directed by the court, including publication, if other
12 means of notification are ineffective.

13 (b) Notice under this section shall be served, mailed, or
14 delivered, or last published at least twenty days before any
15 hearing in this state.

16 (c) Proof of service outside this state may be made by affi-
17 davit of the individual who made the service, or in the manner
18 prescribed by the law of this state, by the order pursuant to
19 which the service is made or by the law of the place in which
20 the service is made. If service is made by mail, proof may be
21 a receipt signed by the addressee or other evidence of de-
22 livery to the addressee.

23 (d) Notice is not required if a person submits to the juris-
24 diction of the court.

§48-10-6. Simultaneous proceedings in other states.

1 (a) A court of this state shall not exercise its jurisdiction
2 under this article if at the time of filing the petition a proceed-
3 ing concerning the custody of the child was pending in a court
4 of another state exercising jurisdiction substantially in con-
5 formity with this article, unless the proceeding is stayed by
6 the court of the other state because this state is a more appro-
7 priate forum or for other reasons.

8 (b) Before hearing the petition in a custody proceeding, the
9 court shall examine the pleadings and other information sup-
10 plied by the parties under section nine of this article and shall
11 consult the child custody registry established under section
12 sixteen of this article concerning the pendency of proceedings
13 with respect to the child in other states. If the court has reason
14 to believe that proceedings may be pending in another state,
15 it shall direct an inquiry to the state court administrator or
16 other appropriate official of the other state.

17 (c) If the court is informed during the course of the pro-
18 ceeding that a proceeding concerning the custody of the child
19 was pending in another state before the court assumed juris-

20 diction, it shall stay the proceeding and communicate with the
21 court in which the other proceeding is pending to the end that
22 the issue may be litigated in the more appropriate forum and
23 that information be exchanged in accordance with sections
24 nineteen, twenty, twenty-one and twenty-two of this article.
25 If a court of this state has made a custody decree before being
26 informed of a pending proceeding in a court of another state,
27 it shall immediately inform that court of the fact. If the court
28 is informed that a proceeding was commenced in another state
29 after it assumed jurisdiction, it shall likewise inform the other
30 court to the end that the issues may be litigated in the more
31 appropriate forum.

§48-10-7. Inconvenient forum.

1 (a) A court which has jurisdiction under this article to
2 make and initial or modification decree may decline to
3 exercise its jurisdiction any time before making a decree if
4 it finds that it is an inconvenient forum to make a custody
5 determination under the circumstances of the case and that a
6 court of another state is a more appropriate forum.

7 (b) A finding of inconvenient forum may be made upon
8 the court's own motion or upon motion of a party or a guardian
9 ad litem or other representative of the child.

10 (c) In determining if it is an inconvenient forum, the
11 court shall consider if it is in the interest of the child
12 that another state assume jurisdiction. For this purpose it
13 may take into account the following factors, among others:

14 (1) If another state is or recently was the child's home
15 state.

16 (2) If another state has a closer connection with the
17 child and his family or with the child and one or more of
18 the contestants;

19 (3) If substantial evidence concerning the child's present
20 or future care, protection, training and personal relationships
21 is more readily available in another state;

22 (4) If parties have agreed on another forum which is no
23 less appropriate; and

24 (5) If the exercise of jurisdiction by a court of this state
25 would contravene any of the purposes stated in section one
26 of this article.

27 (d) Before determining whether to decline or retain juris-
28 diction, the court may communicate with a court of another
29 state and exchange information pertinent to the assumption
30 of jurisdiction by either court with a view to assuring that
31 jurisdiction will be exercised by the more appropriate court
32 and that a forum will be available to the parties.

33 (e) If the court finds that it is an inconvenient forum
34 and that a court of another state is a more appropriate
35 forum, it may dismiss the proceedings, or it may stay pro-
36 ceedings upon condition that a custody proceeding be promptly
37 commenced in another named state or upon any other condi-
38 tions which may be just and proper, including the condition
39 that a moving party stipulate his consent and submission to
40 the jurisdiction of the other forum.

41 (f) The court may decline to exercise its jurisdiction under
42 this article if a custody determination is incidental to an action
43 for divorce or another proceeding while retaining jurisdiction
44 over the divorce or other proceeding.

45 (g) If it appears to the court that it is clearly an inap-
46 propriate forum, it may require the party who commenced
47 the proceedings to pay, in addition to the costs of the pro-
48 ceedings in this state, necessary travel and other expenses,
49 including attorneys' fees, incurred by other parties or their
50 witnesses. Payment is to be made to the clerk of the court
51 for remittance to the proper party.

52 (h) Upon dismissal or stay of proceedings under this
53 section the court shall inform the court found to be the
54 more appropriate forum of this fact or, if the court which
55 would have jurisdiction in the other state is not certainly
56 known, shall transmit the information to the court administra-
57 tor or other appropriate official for forwarding to the ap-
58 propriate court.

59 (i) Any communication received from another state in-
60 forming this state of a finding of inconvenient forum be-

61 cause a court of this state is the more appropriate forum
62 shall be filed in the custody registry of the appropriate court.
63 Upon assuming jurisdiction the court of this state shall in-
64 form the original court of this fact.

§48-10-8. Jurisdiction declined by reason of conduct.

1 (a) If the petitioner for an initial decree has wrongfully
2 taken the child from another state or has engaged in similar
3 reprehensible conduct, the court may decline to exercise
4 jurisdiction if this is just and proper under the circumstances.

5 (b) Unless required in the interest of the child, the court
6 shall not exercise its jurisdiction to modify a custody decree
7 of another state if the petitioner, without consent of the
8 person entitled to custody, has improperly removed the child
9 from the physical custody of the person entitled to custody
10 or has improperly retained the child after a visit or other
11 temporary relinquishment of physical custody. If the petitioner
12 has violated any other provision of a custody decree of another
13 state, the court may decline to exercise its jurisdiction if this
14 is just and proper under the circumstances.

15 (c) In appropriate cases a court dismissing a petition under
16 this section may charge the petitioner with necessary travel
17 and other expenses, including attorneys' fees, incurred by
18 other parties or their witnesses.

§48-10-9. Information under oath to be submitted to the court.

1 (a) Every party in a custody proceeding in his first pleading
2 or in an affidavit attached to that pleading shall give informa-
3 tion under oath as to the child's present address, the places
4 where the child has lived within the last five years, and the
5 names and present addresses of the persons with whom the
6 child has lived during that period. In this pleading or affidavit
7 every party shall further declare under oath whether:

8 (1) He has participated (as a party, witness or in any
9 other capacity) in any other litigation concerning the custody
10 of the same child in this or any other state;

11 (2) He has information of any custody proceeding concern-
12 ing the child pending in a court of this or any other state;
13 and

14 (3) He knows of any person not a party to the proceedings
15 who has physical custody of the child or claims to have
16 custody or visitation rights with respect to the child.

17 (b) If the declaration as to any of the above items is in
18 the affirmative, the declarant shall give additional information
19 under oath as required by the court. The court may examine
20 the parties under oath as to details of the information furn-
21 ished and as to other matters pertinent to the court's juris-
22 diction and the disposition of the case.

23 (c) Each party has a continuing duty to inform the court
24 of any custody proceeding concerning the child in this or
25 any other state of which he obtained information during this
26 proceeding.

§48-10-10. Additional parties.

1 If the court learns from information furnished by the par-
2 ties pursuant to section nine of this article or from other
3 sources that a person not a party to the custody proceeding
4 has physical custody of the child or claims to have custody
5 or visitation rights with respect to the child, it shall order that
6 person to be joined as a party and to be duly notified of the
7 pendency of the proceeding and of his joinder as a party. If
8 the person joined as a party is outside this state, he shall be
9 served with process or otherwise notified in accordance with
10 section five of this article.

§48-10-11. Appearance of parties and the child.

1 (a) The court may order any party to the proceeding who
2 is in this state to appear personally before the court. If that
3 party has physical custody of the child, the court may order
4 that he appear personally with the child.

5 (b) If a party to the proceeding whose presence is desired by
6 the court is outside this state with or without the child, the
7 court may order that the notice given under section five of this
8 article include a statement directing that party to appear per-
9 sonally with or without the child and declaring that failure
10 to appear may result in a decision adverse to that party.

11 (c) If a party to the proceeding who is outside this state is

12 directed to appear under subsection (b) of this section or desires
 13 to appear personally before the court with or without the
 14 child, the court may require another party to pay to the clerk
 15 of the court travel and other necessary expenses of the party
 16 so appearing and of the child if this is just and proper under
 17 the circumstances.

§48-10-12. Psychological evidence.

1 In a proceeding under this article in which a circuit court
 2 in this state must determine or advise upon the issue of
 3 custody, testimony by a licensed psychologist relevant to a
 4 child's (a) academic skills and progress, (b) socialization,
 5 (c) physical well-being, and (d) emotional and mental status
 6 shall be admissible, subject however to all the rules of
 7 evidence ordinarily applicable to such testimony: *Provided*,
 8 That for the sole purpose of evidence relevant to the child's
 9 academic skills and progress, the testimony of a school
 10 psychologist shall be admissible. Any party may move for
 11 a psychological evaluation of the child at such reasonable
 12 time and place as the court shall, for good cause, order, for
 13 the purpose of preparing such testimony. Unless it appears
 14 that all the parties litigating the issue of custody desire to
 15 adduce evidence resulting from such an evaluation, the court
 16 may, on its own motion, order an independent evaluation
 17 by a licensed psychologist selected by agreement of the
 18 parties or, in the absence of such agreement, by the court.
 19 The court may assess as a cost of the proceeding the reason-
 20 able costs of transportation to the place of such evaluation,
 21 the evaluation, and the attendance in court by the psychologist
 22 for the giving of evidence, including expert witness fees.
 23 Costs shall be allocated among the parties as equity may,
 24 in the discretion of the court, require.

§48-10-13. Binding force and res judicata effect of custody decree.

1 A custody decree rendered by a court of this state which
 2 had jurisdiction under section three of this article binds all
 3 parties who have been served in this state or notified in ac-
 4 cordance with section five of this article or who have sub-
 5 mitted to the jurisdiction of the court, and who have been
 6 given an opportunity to be heard. As to these parties the cus-

7 tody decree is conclusive as to all issues of law and fact de-
8 cided and as to the custody determination made unless and
9 until that determination is modified pursuant to law, including
10 the provisions of this article.

§48-10-14. Recognition of out-of-state custody decrees.

1 The courts of this state shall recognize and enforce an
2 initial or modification decree of a court of another state which
3 had assumed jurisdiction under statutory provisions substan-
4 tially in accordance with this article or which was made under
5 factual circumstances meeting the jurisdictional standards of
6 this article, so long as this decree has not been modified in
7 accordance with jurisdictional standards substantially similar
8 to those of this article.

§48-10-15. Modification of custody decree of another state.

1 (a) If a court of another state has made a custody decree, a
2 court of this state shall not modify that decree unless (1) it
3 appears to the court of this state that the court which rendered
4 the decree does not now have jurisdiction under jurisdictional
5 prerequisites substantially in accordance with this article or
6 has declined to assume jurisdiction to modify the decree and
7 (2) the court of this state has jurisdiction.

8 (b) If a court of this state is authorized under subsection
9 (a) of this section and section eight of this article to modify a
10 custody decree of another state, it shall give due consideration
11 to the transcript of the record and other documents of all
12 previous proceedings submitted to it in accordance with sec-
13 tion twenty-two of this article.

§48-10-16. Filing and enforcement of custody decree of another state.

1 (a) A certified copy of a custody decree of another state
2 may be filed in the office of the clerk of any circuit court of
3 this state. The clerk shall treat the decree in the same manner
4 as a custody decree of a circuit court, or of any court of this
5 state of competent jurisdiction. A custody decree so filed has
6 the same effect and shall be enforced in like manner as a
7 custody decree rendered by a court of this state.

8 (b) A person violating a custody decree of another state
9 which makes it necessary to enforce the decree in this state
10 may be required to pay necessary travel and other expenses, in-
11 cluding attorneys' fees, incurred by the party entitled to the
12 custody or his witnesses.

**§48-10-17. Registry of out-of-state custody decrees and proceed-
ings.**

1 The clerk of each circuit court shall maintain a registry in
2 which he shall enter the following:

3 (1) Certified copies of custody decrees of other states, re-
4 ceived for filing;

5 (2) Communications as to the pendency of custody pro-
6 ceedings of other states;

7 (3) Communications concerning a finding of inconvenient
8 forum by a court of another state; and

9 (4) Other communications or documents concerning custody
10 proceedings in another state which may affect the jurisdiction
11 of a court of this state or the disposition to be made by it in
12 a custody proceeding.

§48-10-18. Certified copies of custody decree.

1 The clerk of the circuit court of this state, at the request of
2 the court of another state or at the request of any person who
3 is affected by or has a legitimate interest in a custody decree,
4 shall certify and forward a copy of the decree to that court or
5 person.

§48-10-19. Taking testimony in another state.

1 In addition to other procedural devices available to a party,
2 any party to the proceeding or a guardian ad litem or other re-
3 presentative of the child may adduce testimony of witnesses,
4 including parties and the child, by deposition or otherwise, in
5 another state. The court on its own motion may direct that
6 the testimony of a person be taken in another state and may
7 prescribe the manner in which and the terms upon which the
8 testimony shall be taken.

§48-10-20. Hearings and studies in another state; orders to appear.

1 (a) A court of this state may request the appropriate
2 court of another state to hold a hearing to adduce evidence,
3 to order a party to produce or give evidence under other
4 procedures of that state, or to have social studies made with
5 respect to the custody of a child involved in proceedings
6 pending in the court of this state; and to forward to the
7 court of this state certified copies of the transcript of the record
8 of the hearing, the evidence otherwise adduced or any social
9 studies prepared in compliance with the request. The cost of
10 the services may be assessed against the parties or, if necessary,
11 ordered paid out of the treasury of the state upon certificate
12 of the court wherein the case is pending.

13 (b) A court of this state may request the appropriate
14 court of another state to order a party to custody proceedings
15 pending in the court of this state to appear in the proceedings
16 and, if that party has physical custody of the child, to appear
17 with the child. The request may state that travel and other
18 necessary expenses of the party and of the child whose appear-
19 ance is desired will be assessed against another party or will
20 otherwise be paid.

§48-10-21. Assistance to courts of other states.

1 (a) Upon request of the court of another state, the courts
2 of this state which are competent to hear custody matters
3 may order a person in this state to appear at a hearing to
4 adduce evidence or to produce or give evidence under other
5 procedures available in this state or may order social studies
6 to be made for use in a custody proceeding in another state.
7 A certified copy of the transcript of the record of the hearing
8 or the evidence otherwise adduced and any social studies pre-
9 pared shall be forwarded by the clerk of the court to the
10 requesting court.

11 (b) A person within this state may voluntarily give his
12 testimony or statement in this state for use in a custody pro-
13 ceeding outside this state.

14 (c) Upon request of the court of another state a competent
15 court of this state may order a person in this state to appear
16 alone or with the child in a custody proceeding in another

17 state. The court may condition compliance with the request
18 upon assurance by the other state that state travel and other
19 necessary expenses will be advanced or reimbursed.

§48-10-22. Preservation of documents for use in other states.

1 In any custody proceeding in this state the court shall
2 preserve the pleadings, orders and decrees, any record that
3 has been made of its hearings, social studies and other perti-
4 nent documents until the child reaches eighteen years of age.
5 Upon appropriate request of the court of another state the
6 court shall forward to the other court certified copies of any
7 or all of such documents.

§48-10-23. Request for court records of another state.

1 If a custody decree has been rendered in another state
2 concerning a child involved in a custody proceeding pending
3 in a court of this state, the court of this state upon taking
4 jurisdiction of the case shall request of the court of the other
5 state a certified copy of the transcript of any court record and
6 other documents mentioned in section twenty-one of this article.

§48-10-24. International application.

1 The general policies of this article extend to the internation-
2 al area. The provisions of this article relating to the recogni-
3 tion and enforcement of custody decrees of other states apply
4 to custody decrees and decrees involving legal institutions
5 similar in nature to custody institutions rendered by appro-
6 priate authorities of other nations if reasonable notice and
7 opportunity to be heard were given to all affected persons.

§48-10-25. Priority.

1 Upon request of a party to a custody proceeding which
2 raises a question of existence or exercise of jurisdiction under
3 this article, the case shall be given calendar priority and
4 handled expeditiously.

§48-10-26. Short title.

1 This article may be cited as the "Uniform Child Custody
2 Jurisdiction Act."

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

L. P. Bayler

Chairman Senate Committee

Tony E. Whitlow

Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Todd C. Wilks

Clerk of the Senate

W. Blankenship

Clerk of the House of Delegates

Walter R. Morgan

President of the Senate

Mark H. Lee, Jr.

Speaker House of Delegates

The within *is approved* this the *9*
day of *April*, 1981.

John R. Dyer

Governor

RECEIVED

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OFFICE OF THE GOVERNOR

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SECY. OF STATE